

**BEFORE THE
COMMISSION ON LANDLORD TENANT AFFAIRS
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

Michelle Jefferies

Complainant

V.

11825 Enid Drive, LLC

Respondent

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Case No. 31451

Rental Facility: 11825 Enid Drive, Potomac, MD (License # 53848)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 25th day of August 2010, found, determined, and ordered, as follows:

BACKGROUND

On February 23, 2010, Michelle Jefferies ("Complainant"), former tenant at 11825 Enid Drive, Potomac, MD ("Property"), a licensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, ("Department"), in which she alleged that her former landlord, 11825 Enid Drive, LLC, owner of the Property ("Respondent"), through its management company, Long and Foster Realtors ("Agent"): (1) assessed unjust charges against her \$6,500.00 security deposit after the termination of her tenancy, in violation of § 8-203(f)(1) of the Real Property Article, Annotated Code of Maryland, 1999, as amended ("Real Property Article"); and, (2) took an additional security deposit in the amount of \$6,500.00 for pre-paid rent equivalent to two months rent; in violation of § 8-203(b)(1) of the Real Property Article.

The Complainant asserted that she did not damage the Property in excess of ordinary wear and tear during her tenancy, and therefore, the Respondent had no reasonable basis to withhold any portion of her security deposit plus accrued interest.

The Respondent contended that: (1) the Complainant damaged the Property in excess of ordinary wear and tear during her tenancy; and, (2) he incurred actual expenses to repair those damages.

The Complainant is seeking an Order from the Commission for the Respondent to refund the pre-paid rent (\$6,500.00) plus accrued interest, the remainder of the security deposit plus accrued interest; and a penalty of up to 3 times that amount for the unreasonable withholding.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on April 6, 2010, the Commission voted to hold a public hearing on May 18, 2010. Due to the Respondent's scheduling conflicts, the public hearing was rescheduled twice, once for June 17, 2010, and a second time for July 21, 2010. The public hearing in the matter of Michelle Jefferies v. Ariel Nurieli, Partner, and 11825 Enid Drive, LLC, relative to Case No. 31451, commenced on July 21, 2010.

The record reflects that the Complainant and the Respondent were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were the Complainant, Michelle Jefferies, Sidney Smith, Complainant's brother, and on behalf of the Respondent, 11825 Enid Drive, LLC, Minka Goldstein, and Mary Lombardo, Esquire.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered into evidence the following exhibits offered by the Complainant: (1) Washington Gas bill and payment history of Account # 2952 373047, dated July 20, 2010, identified as Complainant's Exhibit No. 1; and (2) a letter dated July 21, 2010, directed to the Commission and signed by Stacey Sauter, Realtor for the Complainant identified as Complainant's Exhibit No. 2. The Commission also entered into evidence the following exhibits offered by the Respondent: (1) Invoice from David's Landscaping, dated August 12, 2009, for yard work, identified as Respondent's Exhibit No. 1.

The Commission kept the record open for one week, until July 28, 2010, so that the Respondent and the Complainant could submit additional documentation. On July 25, 2010, the Complainant submitted proof of payment for a cleaning service and copies of two e-mails sent to Minka Goldstein relative to leaks at the Property. These documents were added to the record and marked as Complainant's Exhibit No. 3. On July 28, 2010, Mary Lombardo, attorney for the Respondent, submitted a spreadsheet showing calculation of the amount charged to Complainant for repairs and painting done at the Property. These documents were also added to the record and marked as Respondent's Exhibit No. 2. Accordingly, the record was closed on July 28, 2010.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. On June 25, 2007, the Respondent, the Complainant and Inez Smith Reid (a warrantor at the time) signed a one year lease agreement (“Lease”) for the rental of the Property, which commenced on August 1, 2007, and expired on July 31, 2008, for a monthly rent of \$3,250.00.

2. Prior to the expiration of the initial lease term, on June 12, 2008, the Respondent and the Complainant renewed the Lease for another year, until July 31, 2009. At that time Inez Smith Reid’s name was removed from the Lease.

3. On or about June 25, 2007, the Complainant paid the Respondent a security deposit in the amount of \$6,500.00, which is receipted in the Lease.

4. On June 25, 2007, a General Addendum to the Lease was signed by the Respondent and the Complainant which states in pertinent part:

“...Tenant will pay rent as follows: on 08/01/07, she will pay for the months of August and September. On September 1, 2007, she will pay for October and it will continue that she pay on the first of each month for the next month, since she will already have paid for the current month. She will always be paid for two months in advance on the first of every month...”

5. In June 2008, the Complainant did not make a rental payment, and the Respondent credited one month of the pre-paid rent towards her rent obligation (\$3,250.00).

6. On July 1, 2009, the Complainant advised the Respondent of her intention to vacate the Property by July 31, 2009. This notice was received by the Respondent via e-mail the same day.

7. The Commission finds that on July 31, 2009, the Complainant vacated the Property, having paid rent in full through that date and not being liable for any additional rent.

8. On August 3, 2009, the parties agreed to conduct a walkthrough of the Property. At that time, no deficiencies were identified by the Respondent; however, there was no walkthrough report signed by the parties.

9. The Commission finds that on September 3, 2009, the Respondent refunded the Complainant the amount of \$3,250.00, which sum represented the return of the rent overpayment.

10. The Commission finds that on September 10, 2009, the Respondent refunded the Complainant the amount of \$2,988.14. Together with this refund, the Respondent sent the Complainant an itemized list of damages claimed against the security deposit as follows:

Gross Amount Available	6,846.51
Less Actual Payments:	

224.00	for	locksmith to change locks
155.00	for	cleaning service
114.00	for	carpet cleaning
165.00	for	flea treatment
680.00	for	landscaping work
156.50	for	a/c filter replacement
365.00	for	carpet replacement
455.00	for	wood flooring repair
300.00	for	gutters cleaning and repair
1,131.00	for	miscellaneous painting and repairs
<u>112.87</u>	for	final gas bill

Net Check 2,988.14

11. At the hearing, the Complainant accepted responsibility for the following charges: (a) Locksmith to change locks in the amount \$224.00; (b) carpet cleaning in the amount of \$114.00; and (c) flea treatment of the carpet in the amount of \$165.00; for a total amount of \$503.00.

12. The Commission finds that the charge for carpet replacement in the amount of \$365.00, constitutes damage in excess of ordinary wear and tear but the Complainant is only liable for a pro-rata amount of \$121.60 ($\$365.00 \div 60 \text{ months} = \$6.08 \times 20 \text{ months} = \121.60).

13. The Commission finds that the charge for cleaning service is a standard business expense and the amount of \$155.00 assessed against the Complainant's security deposit is disallowed.

14. The Commission finds that the cost assessed against the Complainant's security deposit for: (a) landscaping work (\$680.00), (b) air conditioner replacement of a permanent filter (\$156.50), (c) gutter cleaning and repair (\$300.00); and, (d) miscellaneous painting and repairs (\$1,131.00) for a total of \$ 2,267.50, were not in excess of ordinary wear and tear, and are not the responsibility of the Complainant.

15. The Commission finds that the charge assessed against the Complainant's security deposit for wood flooring repair in the amount of \$455.00 was not a cost actually incurred and is disallowed.

16. The Commission finds that the final gas bill charged against the Complainant's security deposit in the amount of \$112.87 was never paid by the Respondent. This deduction is disallowed.

17. The Commission finds that the Respondent failed to credit the Complainant's security deposit with the correct amount of simple interest (\$390.00) which had accrued on her \$6,500.00 security deposit from the commencement of her tenancy, August 1, 2007, until the

termination of her tenancy, July 31, 2009. The Respondent instead credited the Complainant's account with \$346.51 accrued interest.

18. The Commission finds that the Respondent assessed against the Complainant's security deposit costs incurred to make repairs that were not in excess of ordinary wear and tear, or costs that were never incurred.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. The Commission concludes that the Respondent sent an itemized list of damages, together with a statement of cost incurred to repair the damages, to the Complainant within forty-five (45) days after the termination of her tenancy, as required by § 8-203(g)(1) of the Real Property Article.

2. The Commission concludes that the Respondent failed to substantiate that the cost incurred for many of the damages claimed against the Complainant's security deposit were in excess of ordinary wear and tear. The Respondent's assessment of \$2,990.37 against the Complainant's security deposit to repair damages which were not in excess of ordinary wear and tear or were not actually incurred, constitutes a violation of § 8-203(f)(1)(i), and § 8-203(f)(2) of the Real Property Article, and caused a defective tenancy.

3. The Commission concludes that the Respondent's failure to pay the Complainant the correct amount of interest which accrued on her security deposit constitutes a violation of § 8-203(e)(1) of the Real Property Article, and created a defective tenancy.

4. The Commission concludes that the acceptance of two full month advance rent payment during the Complainant's tenancy was an agreement reached by the parties at the beginning of the tenancy. During the tenancy (June 2008) the Complainant used one of the advanced payment for rent, and the remaining month was returned to her at the conclusion of the tenancy. Based on this, these advanced payments did not constitute an additional security deposit.

5. Although the Commission concludes that the failure by the Respondent to refund part of the Complainant's security deposit plus accrued interest (\$3,277.26) was unreasonable and constitutes a violation of Section 8-203(e)(4) of the Real Property Article, to award a penalty, as requested by the Complainant, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Landlord's conduct in wrongfully withholding all or part of the Complainant's security deposit and whether or not the Landlord acted in bad faith or has a prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondent's conduct did not rise to the level of bad faith or egregiousness necessary to award a penalty. Therefore, Complainant's request for such an award is denied.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondent pay the Complainant **\$3,277.26** which sum represents the Complainant's security deposit (\$6,500.00) plus the correct amount of accrued interest (\$390.00), minus refund already received by the Complainant (\$2,988.14), minus damages in excess of ordinary wear and tear (\$624.60).

Commissioner Beverly Flanagan, Commissioner Laura Murray, and Commissioner Katia G. Cervoni, Panel Chairperson, concurred in the foregoing decision unanimously.

To comply with this Order, Respondent, 11825 Enid Drive, LLC, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Michelle Jefferies, in the amount of \$3,277.26.

The Respondent is hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of a Class A civil citation and \$500.00 civil fine, should the Commission determine that the Respondent has not, within thirty (30) calendar days of the date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Be advised that pursuant to Section 29-49 of the County Code, should the Respondent choose to appeal the Commission's Order, it must post a bond with the Circuit Court in the amount of the award (\$3,277.26) if a stay of enforcement of this Order is sought.

Katia G. Cervoni, Panel Chairperson
Commission on Landlord-Tenant Affairs